

EXHIBIT 4 B0H
DATE 1/8/09
HB 138

TESTIMONY IN FAVOR OF HB 138
BEFORE THE HOUSE BUSINESS AND LABOR COMMITTEE
JERRY KECK, ADMINISTRATOR
EMPLOYMENT RELATIONS DIVISION
DEPARTMENT OF LABOR AND INDUSTRY
JANUARY 8, 2009

Chairman Wilson and members of the committee, my name is Jerry Keck. I am the administrator of the Employment Relations Division of the Department of Labor and Industry. First, I want to thank Rep. Hunter for agreeing to carry this bill.

The Employment Relations Division implements and administers a number of programs affecting the employer – employee relationship. One area of regulatory responsibilities is in workplace safety standards for public employers.

1. Sections 1 (page 2) identifies the short title as the Montana Occupational Safety and Health Act.
2. Section 2 (pages 2-3) includes the definitions used in the act.
3. Section 3 (page 3) outlines the administrative authority of the Department. It also identifies the funding sources, which are a combination of federal grants and workers' compensation administration funds. This section also allows the Department to develop a statewide employment safety program. This is important since the major cost driver contributing to our high workers' compensation premium rates is the frequency rate of injuries in Montana.
4. Section 4 (pages 3-4) defines the Department rulemaking authority for adopting appropriate safety and health standards; and provides for a mechanism to grant variances in specific circumstances.
5. Section 5 (pages 4-5) clarifies that the standards adopted under this act apply only to public sector employers and employees in the state; and also identifies which employers and entities the standards to not apply to.
6. Section 6 (page 5) defines the duty of public sector employers to provide a safe work place and the duty of public sector employees to follow the safety standards that are established for public sector employment.
7. Section 7 (page 5) allows the Department to establish by rule the records that must be maintained by public sector employers related to occupational injuries. It also encourages consistency in the reports required for a workers' compensation injury and an occupational injury under this act so that employers meet both obligations with a single report.

EXHIBIT 2
DATE 1/8/9
HB 138

8. Section 8 (pages 5-6) establishes the authority of the Department to do inspections of public sector workplaces.
9. Section 9 (pages 6-7) requires the Department to make a written report of each inspection. The report must include a list of any violations identified during the inspection. The Department may also issue a written citation or assess a penalty of not more than \$1,000 for each violation.
10. Section 10 (page 7) defines the circumstances when the Department may issue a stoop-work order when a violation poses an immediate and substantial risk of serious injury or death.
11. Section 11 (page 8) specifies when the Department may seek injunctive relief to address serious violations of safety standards.
12. Section 12 (page 8) allows the Department to provide onsite safety consultation services to either public or private employers when requested by the employer.
13. Section 13 (page 8) prohibits retaliation against a public sector employee who reports a safety violation or cooperates with the Department in an inspection.
14. Sections 14 and 15 (pages 9-13) include cross references to other sections of law to maintain clarity and consistency with the changes provided in HB 138.
15. Section 16 (pages 13-14) amends the Montana Safety Culture Act to clarify that both the Department and an insurer may provide safety consultation services to public or private employers.
16. Section 17 (page 14) leaves the definitions of employee and employer in Title 50, Chapter 71 needed to clarify the sections of Chapter 71 that are not being repealed.
17. Sections 18 through 21 (pages 14-16) are minor changes to the Montana Coal Mining Act to address issues identified by the Legislative Audit Committee in a regular performance audit of the Department.
18. Section 22 (pages 16-17) identify the sections of the Montana Safety Act and Occupational Safety Act of Montana that are being repealed and replaced by HB 138.
19. Sections 23 through 26 (Page 17) include notification to tribal governments, codification instructions, a saving clause, and an effective date of July 1, 2009

Mr. Chairman, members of the committee, I believe that HB 138 simplifies and streamlines our existing statutes and Department practices into a unified body of law. The department requests your support for HB 138. Thank you.

House Bill 138 cross-walk table:

2009 legislation

existing statutes Health Act Safety Act

Sec. 1, short title	50-70-101	50-71-101
Sec. 2, definitions	50-70-103	50-71-102
Sec. 3, administrative authority	50-70-104	50-71-106 50-71-107 50-71-316
Sec. 4, rulemaking - variances	50-70-105 50-70-114	50-71-301 50-71-302 50-71-311 50-71-312 50-71-314 50-71-315
Sec. 5, applicability of standards	50-70-102	50-71-201 50-71-202 50-71-203
Sec. 6, duties of employers and employees		50-71-201 50-71-202 50-71-203
Sec. 7, employer records and reports	[new]	[new]
Sec. 8, inspections	50-70-115	50-71-321 50-71-322
Sec. 9, report of inspection --violations	50-70-111 50-70-116 50-70-118	50-71-323 50-71-324 50-71-325 50-71-331 50-71-332 50-71-333 50-71-334
Sec. 10, stop-work orders	50-70-117	50-71-327
Sec. 11, injunctive relief	50-70-118	50-71-326
Sec. 12, safety consultation services	50-70-105	
Sec. 13, retaliation prohibited	[new]	[new]
Sec. 14, amend 20-15-403, application of other school district provisions		
Sec. 15, amend 39-71-201, administration fund		
Sec. 16, amend 39-71-1503, safety consultations		
Sec. 17, amend 50-71-102, safety definitions		
Sec. 18, amend 50-73-102, mine definitions		
Sec. 19, amend 50-73-402, department authority to inspect coal mines		
Sec. 20, amend 50-73-406, mine inspections		
Sec. 21, amend 50-73-409, posting at mines		

(continued next page)

EXHIBIT 118/9
DATE 3
138

Sec. 22, repealer clause
Sec. 23, tribal notification clause
Sec. 24, codification instruction
Sec. 25, savings clause
Sec. 26, effective date

House Bill 138 cross-walk table:

1969 Safety Act

2009 legislation

50-71-101	[short title]	Sec. 1
50-71-102	[definitions]	Sec. 2
50-71-103	[applicability to contractors]	<i>no comparable provision</i>
50-71-104	[existing structures]	<i>no comparable provision</i>
50-71-105	[bureau chief qualifications]	<i>no comparable provision</i>
50-71-106	[administrative powers]	Sec. 3
50-71-107	[general research]	Sec. 3
50-71-108	[appoint advisors]	<i>no comparable provision</i>
50-71-109	[report health hazards to DEQ]	<i>no comparable provision</i>
50-71-110	[misdemeanor]	<i>no comparable provision</i>
50-71-201	[employer to use safety items]	<i>not affected by HB 138</i>
50-71-202	[employer to use safe practices]	<i>not affected by HB 138</i>
50-71-203	[can't remove safety devices]	<i>not affected by HB 138</i>
50-71-301	[safety rules]	Sec. 4
50-71-302	[rulemaking procedure]	<i>covered by MAPA</i>
50-71-303	[production of evidence]	<i>covered by MAPA</i>
[reserved]		
50-71-311	[safety rules]	Sec. 4
50-71-312	[rules consistent with stds]	Sec. 4
50-71-313	[30 days for rules to take effect]	<i>no comparable provision</i>
50-71-314	[rules published]	Sec. 4
50-71-315	[variances]	Sec. 4
50-71-316	[dept. assistance]	Sec. 3
[reserved]		
50-71-321	[inspections]	Sec. 8
50-71-322	[reports of violations]	Sec. 9
50-71-323	[compliance order]	Sec. 9
50-71-324	[time to comply]	Sec. 9
50-71-325	[violation – order to comply]	Sec. 9
50-71-326	[injunction]	Sec. 11
50-71-327	[stop work order]	Sec. 10
[reserved]		
50-71-331	[hearing rights]	Sec. 9
50-71-332	[hearing process]	Sec. 9
50-71-333	hearing process]	Sec. 9
50-71-334	[judicial review]	Sec. 9

Cross-walk table:

1971 Health Act

2009 legislation

50-70-101	[short title]	Sec. 1
50-70-102	[declaration of policy]	Sec. 5
50-70-103	[definitions]	Sec. 2
50-70-104	[administration]	Sec. 3
50-70-105	[department authority]	Sec. 4, 12
50-70-106	(previously repealed)	n/a
50-70-107	[duty of physicians to report]	<i>no comparable provision</i>
50-70-108	[apply for federal aid]	Sec. 3
50-70-109	[confidentiality of records]	<i>no comparable provision</i>
50-70-110	(previously repealed)	n/a
50-70-111	[hearings]	Sec. 9
50-70-112	[permits for devices]	<i>no comparable provision</i>
50-70-113	[emissions prohibited]	<i>no comparable provision</i>
50-70-114	[variances]	Sec. 4
50-70-115	[inspections]	Sec. 8
50-70-116	[enforcement]	Sec. 9, 11
50-70-117	[emergency/stop work]	Sec. 10
50-70-118	[penalty]	Sec. 9, 11